

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-002-02-1-5-00187; 45-002-02-1-5-00188; 45-002-02-1-5-00189;
45-002-02-1-5-00190
Parcel #: 002-02-03-0182-0011; 002-02-03-0182-0014; 002-02-03-0182-0013;
002-02-03-0182-0012
Petitioner: Alois L & Verna Schrombeck
Respondent: Department of Local Government Finance
Assessment Year: 2002

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held on October 24, 2003, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for each subject property was \$2,400, and notified the Petitioner on March 19, 2004.
2. The Petitioner filed each Form 139L on April 20, 2004.
3. The Board issued notices of hearing to the parties on February 21, 2005.
4. A hearing was held on March 23, 2005, in Crown Point, Indiana before Special Master Peter Salvesson.

Facts

5. The subject properties are located at 24820 Fulton (2), 124909 Fulton and 12409 Fulton, Lowell, Cedar Creek Township, Lake County.
6. The subject properties are unimproved residential lots each consisting of 0.172 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
 - a) Assessed Value of each parcel as determined by the DLGF:

Land \$2,400	Improvements \$0	Total \$2,400
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- b) Assessed Value requested at hearing by the Petitioner for each parcel:
Land \$500-1,000 Improvements \$0 Total \$500-1,000

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioner: Verna Schrombeck, Owner

For Respondent: Terry Knee, DLGF

Issue

10. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) The assessment of the subject properties is too high. *Schrombeck argument*. The area of the subject parcels are intended to flood when the Kankakee River goes over its banks. *Schrombeck testimony; Pet'r Ex. 2-6*. This area was set up to protect farmland in the area from flooding. *Id*.
- b) The land has a low elevation, and the subject properties are in the heart of the flood area. *Id*. The lots have flooded twice in the current year. *Schrombeck testimony*.
- c) The four parcels were listed for sale together at \$8,000 in November 2004, and the Petitioner received no offers. *Id; Pet'r Ex. 7*.
- d) In 2001, the Petitioner sold a parcel that included a house, that was in the vicinity of the subject properties, for \$1,000. *Schrombeck testimony; Pet'r Ex. 8*.

11. Summary of Respondent's contentions in support of assessment:

- a) The Respondent recommends raising the negative influence factor applied to each property from 50% to 80%. *Knee testimony*. This would lower the assessment of each property from \$2,400 to \$900. *Id*.

Record

12. The official record for this matter is made up of the following:

- a) The Petitions and all subsequent pre-hearing submissions by either party.
- b) The tape recording of the hearing labeled Lake Co - 1368.
- c) Exhibits:

Petitioner's Exhibit 1:	Form 139 L Petitions
Petitioner's Exhibit 2:	Lake Co. Plan Commission Document

Petitioner’s Exhibit 3:	Office of Lake Co. Surveyor Elevation Maps
Petitioner’s Exhibit 4:	Office of Lake Co. Survey: Dennis Tobin Letter
Petitioner’s Exhibit 5:	Kankakee River Basin Commission Document
Petitioner’s Exhibit 6:	Kankakee River Basin Commission Minutes of Meeting
Petitioner’s Exhibit 7:	Advertising Expenses for Property
Petitioner’s Exhibit 8:	Cement Block House Document and Picture
Respondent’s Exhibits 1:	Form 139L Petition
Respondent’s Exhibits 2:	Subject Property Record Card
Board Exhibits A:	Form 139L Petition
Board Exhibits B:	Notice of Hearing
Board Exhibits C:	Hearing Sign-In Sheet

d) These Findings and Conclusions.

Analysis

13. The most applicable governing cases are:

- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d at 475, 478 (Ind. Tax Ct. 2003); see also, *Clark v. State Bd. Of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E. 2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board....through every element of the analysis”).
- a) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

14. The Petitioner did provide sufficient testimony to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the assessment of the subject properties is unrealistic, because the properties often flood.
- b) The Respondent agreed, and recommended that the assessment of each of the four parcels be changed, and that an 80% negative influence factor be applied to the land

values to reflect the presence of planned flooding of the parcels. This change lowers the assessment to \$900 for each parcel.

- c) The Petitioner is in agreement with this change. Thus, the Board hereby determines that the assessment of all four parcels should be lowered to \$900.

Conclusion

17. The Petitioner did establish a prima facie case. The Respondent recommended a change in the assessment of the subject properties. The Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment of each parcel should be changed to \$900.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE - APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.